



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Division of Medical Assistance**  
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Boston, MA 02111  
[www.mass.gov/dma](http://www.mass.gov/dma)

Eligibility Operations Memo 03-09  
August 15, 2003

TO: MassHealth Eligibility Operations Staff

FROM: Russ Kulp, Assistant Commissioner, Member Services

A handwritten signature in black ink, appearing to read "Russell C. Kulp".

RE: **Income First Deeming**

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### **Introduction**

Legislative authority allows the Division to implement a change in regulations about the way the fair-hearing officer determines how an increase in the minimum monthly maintenance needs allowance (MMMNA) for the community spouse may be funded. This change mandates that the institutionalized spouse's income be deemed first and then additional marital assets may be deemed to meet any shortfall.

This change in regulations will become effective on September 1, 2003, and will affect any appeals heard on or after September 2, 2003, regardless of the date of the application.

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### **Overview**

When a member of a married couple applies for long-term-care benefits for the institutionalized member of the couple, the couple's total countable assets are reviewed to determine what portion of those assets the community-based spouse (CS) may retain and what portion of those assets must be spent down before the institutionalized spouse (IS) will become eligible for MassHealth. Part of this process requires that the MassHealth Enrollment Center (MEC) worker provide the community-based spouse with a calculation of their MMMNA. The MMMNA is calculated using actual shelter and utility expenses of the community spouse. If either of the spouses determine that the CS's MMMNA is not sufficient for them to remain in the community, the couple may request a fair hearing to ask that the CS retain additional marital assets beyond those originally assessed to the CS, so that the income generated from those additional assets will bring the CS up to the maximum MMMNA, unless adjusted at a fair hearing.

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**Overview**  
(cont.)

The hearing officer currently must determine the amount of the shortfall between the MMMNA and the CS's monthly income and allow the CS to retain sufficient marital assets, which if invested at the highest available rate, would generate enough income to cover the shortfall.

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**New Income**  
**First Rules**

The revisions to the regulations change the source of the income used to meet the CS's MMMNA. The hearing officer will first allow the CS to retain enough **income** from the IS to bring the CS's MMMNA up to the maximum allowed under 130 CMR 520.026(B)(2) or higher if determined at a fair hearing. If there is still a shortfall to the MMMNA after the income is deemed, the hearing officer will **then** allow additional assets to be retained by the CS so that the income generated from those additional assets will bring them up to the MMMNA.

The institutionalized spouse will always be allowed to retain \$60 of his or her monthly income for personal needs.

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**Questions**

If you have any questions about this change, please have your MEC designee contact the Policy Hotline at 617-210-5331.

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